IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1570 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SURESH KUMAR KASHIRAM - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KAUSHAL D PANDYA for Applicant(s) : 1,
MR DIPEN DESAI APP for Respondent(s) : 1,
MR PN BAVISHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2007

ORAL JUDGMENT

1. RULE. Learned advocate Shri Bavishi for respondent No.2 and learned A.P.P. Shri Dipen Desai for the State waive service of Rule.

2. At the joint request of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

3. The petitioner is husband of respondent No.2. He has challenged an order dated 20.7.2007 passed by the learned Judicial Magistrate First Class, Unja as upheld by an order dated 13.7.2007 passed by the learned Additional Sessions Judge, Fast Track Court, Mehsana.

4. Respondent No.2, wife had filed an application under Section 125 of Criminal Procedure Code seeking maintenance from the petitioner husband. In this application, the learned Magistrate granted maintenance of Rs.3,000/- per month to the wife to be paid by the petitioner. Revision Application of the petitioner was rejected by the learned Additional Sessions Judge. The petitioner is therefore, before this Court in the present petition.

5. It is the case of the petitioner that he is employed as workman in private company in Maize Products in Kathwada and is drawing salary of Rs.575/- per month. The case of the petitioner is that he has

responsibility to maintain his aged parents and son.

6. On other hand, the case of respondent No.2 wife is that in addition to his monthly salary, the petitioner has other sources of income from agricultural land as well as from other business interests. It is also case the of the wife that the parents of the petitioner have independent source of income and need no support.

7. In the present petition, I find that much of the material sought to be relied upon by the petitioner side is not produced on record and therefore, was not available to the Courts below. Even the salary slip of the petitioner is sought to be produced before this Court for the first time. Exact details of the agricultural land of the petitioner or his family are also not available. In absence of all these things, I find it appropriate that the entire issue should be reconsidered by permitting both the sides to lead such evidence as may be advised.

8. For the above purpose, the impugned orders passed by the learned Judicial Magistrate First Class, Unja in Criminal Misc. Application No.127 of 2005 on 20.7.2006 and by the learned Additional Sessions Judge, Fast Track Court, Mehsana Camp at Visnagar in Criminal Revision Application No.74 of 2006 on 13.7.2007 are quashed. The proceedings are remanded

for fresh disposal after permitting both the sides to lead further evidence as may be desired. The learned Magistrate shall attempt to dispose of the proceedings within a period of six months from the date of the receipt of copy of this order. Both the sides shall cooperate with expeditious progress in the matter. Until such time the fresh decision is rendered, the petitioner shall continue to pay sum of Rs.3,000/- to respondent No.2 by way of interim maintenance. This has no reflection of my opinion on the quantum of maintenance to be fixed.

9. With these directions, the petition is disposed of. Rule is made absolute to the above extent.

(AKIL KURESHI, J.)

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